



**NOTICE OF PROPOSED REVISION OF REGULATIONS  
AND STATEMENT OF REASONS**

**California Code of Regulations  
Title 2. Administration  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board  
Article 4. Hearings and Appeals**

**DATE:** July 8, 2005

**TO:** ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND MEMBERS  
OF THE GOVERNOR'S CABINET

**SUBJECT:** PROPOSED AMENDMENTS TO REGULATIONS CONCERNING  
DISCOVERY IN NON-ADVERSE ACTION EVIDENTIARY HEARINGS

**AUTHORITY:**

Under authority established in Government Code (GC) § 18701, the State Personnel Board (SPB) proposes to amend Title 2 of the California Code of Regulations (2CCR) §§ 57.1 through 57.4 which provide procedures for conducting discovery in non-adverse action evidentiary hearings before the five-member State Personnel Board (Board) or its designated representative. These discovery provisions apply to appeals relating to discrimination, denial of reasonable accommodation, and whistleblower retaliation complaints.

**REFERENCE:**

These regulations are amended to implement, interpret, and/or make specific GC §§ 8547.8, 19683, and 19700-19706.

**PUBLIC HEARING:**

Date and Time: August 30, 2005 from 10:00 to 10:30 a.m.

Place: The Westin Los Angeles Airport Hotel  
Midway Room  
5400 West Century Boulevard  
Los Angeles, CA 90045

Purpose: To receive written or oral comments about this action.

**WRITTEN PUBLIC COMMENT PERIOD:**

The written public comment period will close Monday, August 22, 2005, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments for

the Board's consideration at the time of the hearing. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the public comment period.

Written comments may be submitted to Bruce Monfross at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or to [bmonfross@spb.ca.gov](mailto:bmonfross@spb.ca.gov), or faxed to his attention at (916) 653-4256.

In addition, after the August 30, 2005 hearing, SPB staff will review the testimony as well as the written and verbal comments and revise the proposed regulations as necessary. An additional time for public comment will be set aside during the October 4-5, 2005 meeting in Sacramento for those interested parties who are unable to attend the August 30, 2005 meeting in Los Angeles, or who have additional comments regarding any proposed revisions to the regulations.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:**

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based, are available upon request to Elizabeth Montoya. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Elizabeth Montoya at SPB, P.O. Box 944201, Sacramento, CA 94244-2010, or by telephone at (916) 654-0842 or TDD (916) 653-1498.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation(s) is permanently amended.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

GC § 8547.8 authorizes state employees or applicants for state employment to file a complaint with SPB if the employee or applicant believes that he/she has been retaliated against in employment for having engaged in whistleblowing activities.

GC § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (GC §§ 18500 *et seq.*).

GC § 18214 provides that certain subject regulations adopted by SPB are exempt from specific procedures required by the Administrative Procedure Act (Chapter 3.5, commencing with GC § 11340 of Part of Division 3).

GC § 19683 authorizes SPB to investigate and conduct hearings concerning complaints of whistleblower retaliation filed by state employees or applicants for state employment.

GC §§ 19700-19706 authorizes SPB to investigate and conduct hearings concerning discrimination complaints filed by state employees or applicants for state employment who believe they have been discriminated against on the basis of age, blindness or color blindness, sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, mental disability, or sexual orientation.

The proposed revisions clarify that the discovery regulations will apply to cases scheduled for a formal evidentiary hearing before an SPB administrative law judge (ALJ) in the following circumstances:

- When discrimination or retaliation is raised as an affirmative defense during the course of an appeal from disciplinary action (GC §§ 19574 and 19590).
- When an appeal from rejection during probationary period (GC § 19173), medical action (GC § 19253.5), non-punitive action (GC § 19585), denial of reasonable accommodation (GC § 19702), Career Executive Assignment termination (GC § 19889.2), or constructive medical termination is filed with SPB.
- When a complaint of discrimination (GC § 19702), or whistleblower retaliation (Education Code § 87164; GC §§ 8547.8 and 19683) is scheduled for a formal evidentiary hearing.

The proposed revisions also clarify that the discovery regulations will not apply to any other hearing, either formal or informal, conducted by SPB staff. All other revisions are of a technical or clarifying nature.

**IMPACT ON SMALL BUSINESSES:**

No impact on small businesses is anticipated from the implementation of the proposed amendment. Implementing the proposed amendment will affect only state departments and current and prospective employees of state departments.

**LOCAL MANDATE:**

SPB has determined that the proposed action imposes no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to G.C. § 17561.

**COST ESTIMATES OF PROPOSED ACTION:**

**Costs or Savings to State Agencies:**

The proposed regulations will involve no additional costs or savings to any state agency.

**Impact on Housing Costs:**

The proposal will not affect housing costs.

**Costs or Savings in Federal Funding to the State:**

No impact.

**Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:**

No costs to local agencies or school districts are required to be reimbursed.

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies:**

This proposal does not impose nondiscretionary costs or savings on local agencies.

**Cost Impact on Representative Private Persons or Businesses:**

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:**

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:**

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination, creation, or expansion of existing businesses or create or expand businesses in the State of California.

**ALTERNATIVES STATEMENT:**

SPB must determine that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**FINAL STATEMENT OF REASONS:**

It is anticipated that the proposed regulations will be filed with Office of Administrative Law pursuant to GC § 18214, under which no Final Statement of Reasons is required. However, if a Final Statement of Reason is prepared, copies may be obtained from the contact person or backup contact person when it becomes available.

**ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:**

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons, and if prepared and when available for review, the Final Statement of Reasons, will be on SPB website at: [www.spb.ca.gov](http://www.spb.ca.gov).

**STATEMENT OF REASONS:**

The proposed revisions are designed to clarify the extent to which discovery may be conducted in those cases scheduled for a formal evidentiary hearing before a SPB ALJ. Existing statutes and regulations do not specify the permissible scope of discovery for the following types of cases that are typically scheduled for formal evidentiary hearings before an ALJ: rejections during probationary period (GC § 19173); medical transfer/demotion/termination (GC § 19253.5); non-punitive transfer/demotion/termination (GC § 19585); career executive assignment termination (GC § 19889.2); and constructive medical termination. The proposed revised regulations make clear the discovery mechanisms that are available to the parties for such cases.

***/s/Laura M. Aguilera***

Laura M. Aguilera  
Assistant Executive Officer

Attachment: Proposed Text of Amended Regulations

## **REGULATIONS GOVERNING DISCOVERY IN EVIDENTIARY HEARINGS**

For this amendment, text added to the regulation is indicated by underline and text deleted from the regulation is indicated by ~~strikethrough~~.

### **TITLE 2. Administration DIVISION 1. Administrative Personnel CHAPTER 1. State Personnel Board SUBCHAPTER 1. General Civil Service Regulations ARTICLE 4. Hearings and Appeals**

#### **§ 57.1. Discovery in Evidentiary Hearings ~~Other than Adverse Actions;~~ ~~Exclusive Provisions Before the Board or a Board~~ Administrative Law Judge.**

~~The provisions of Section 57.2 – 57.4 provide the exclusive right to and method of discovery for evidentiary hearings conducted before the Board and/or Board administrative law judges concerning appeals from discrimination (Sections 54 and 54.2), and when a petition for hearing is granted from the Notice of Findings issued in relation to a complaint of whistleblower retaliation (Sections 56– 56.8). These provisions shall also apply when discrimination or retaliation is raised as an affirmative defense in an answer or appeal filed with the Board pursuant to the provisions of Section 51.2 concerning Notices of Adverse Action (Government Code Sections 19575 and 19590), Rejections During Probationary Period (Government Code Section 19175), Medical Actions (Government Code Section 19253.5), and Non-Punitive Actions (Government Code Section 19585).~~

~~(a) An employee who is served with a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19574 or 19590 shall be entitled to conduct discovery in accordance with the provisions of Government Code Sections 19574.1 and 19574.2. In those cases where an employee raises an affirmative defense alleging discrimination or retaliation when filing an answer to a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19575 or 19590, or in those cases where an employee raises an affirmative defense of retaliation or discrimination during the course of a hearing before the Board or a Board administrative law judge regarding an appeal from adverse action, the appointing power or any other named respondent shall be entitled to conduct discovery regarding any such affirmative defense in accordance with the provisions of Sections 57.2 – 57.4.~~

(b) Any party to any other type of action scheduled for hearing before the Board and/or a Board administrative law judge, including but not limited to, rejections during probationary period (Government Code Section 19173), discrimination complaints (Government Code Section 19702), appeals from denial of reasonable accommodation (Government Code Section 19702), whistleblower retaliation complaints (Education Code Section 87164, Government Code Sections 8547.8 and 19683), appeals from non-punitive action (Government Code Section 19585), appeals from medical action

(Government Code Section 19253.5), appeals from Career Executive Assignment termination (Government Code Section 19889.2), and appeals from constructive medical termination, shall be entitled to conduct discovery in accordance with the provisions of Sections 57.2 – 57.4.

(c) The discovery provisions set forth in Sections 57.2 – 57.4 shall not apply to those cases scheduled for hearing or review by the Executive Officer or a Board hearing officer, to informal hearings conducted by Board administrative law judges pursuant to Government Code Section 11445.10 et seq., to those cases assigned to hearing before a Board administrative law judge pursuant to the provisions of Section 52(b), to appeals from termination of Limited Term employees pursuant to Section 282, to appeals from termination of a Limited Examination and Appointment Program appointment pursuant to Section 547.57, or to any other appeal or complaint excluded from the formal evidentiary hearing process pursuant to statute or regulation.

NOTE: Authority cited: Sections 18701 and 18214, Government Code.

Reference: Section 87164, Education Code; and Sections 8547.8, 11445.10 et seq., 18670, 18671, 18672, 18672.1, 18673, 18675, 19173, 19175, 19253.5, 19574, 19574.1, 19574.2, 19575, 19585, 19590, 19683, and 19700-19706, and 19889.2, Government Code.

## **§ 57.2. Request for Discovery; Statements; Writings; Investigative Reports; Witness List.**

(a) Each party to the an appeal or complaint listed in Section 57.1(a) or (b) is entitled to serve a request for discovery on any other named party to the complaint or appeal as allowed by subdivisions (c) - (e), and Government Code Section 18673. All requests for discovery shall be made no later than ~~36~~ 40 days prior to the initial hearing date, except upon a petition and showing of good cause by the party seeking discovery, and a finding by the administrative law judge, in his or her sole discretion, that such additional or late requests for discovery should be permitted in the furtherance of justice. For purposes of this section, the term "party" is defined as the person, ~~to include or appointing powers, filing the appeal or complaint, any named respondent, and his or her their designated legal representative, as well as any person, to include appointing powers, specifically identified in the appeal as a named respondent, and his or her designated legal representative.~~

~~(b) When an appeal is amended, all parties, other than the amending party, may serve a request for discovery on any other party to the appeal within 5 days of service of the amended appeal. Such requests for discovery shall be limited solely to those additional issues, if any, raised in the amended appeal. The administrative law judge may, in his or her discretion, extend the time period for requesting discovery under this subdivision upon a showing of good cause.~~

~~(eb) Each party to the appeal or complaint is entitled to request and receive from any other party to the appeal or complaint the names and home or business addresses of percipient witnesses to the event(s) in question, to the extent known to the other party, unless and of individuals who may be called as witnesses during the course of the hearing, except to the extent that disclosure of the address is prohibited by law.~~

~~Each party to the appeal is also entitled to request and receive from any other party to the appeal the names and addresses of individuals who may be called as witnesses to testify during the course of the hearing. The responding party may, in his or her discretion, provide either the home or business address of the witness, unless except to the extent that disclosure of the address is prohibited by law.~~

(dc) Each party to the appeal or complaint is entitled to inspect and make a copy of any of the following in the possession, custody, or control of any other party to the appeal or complaint:

(1) Statements, as that term is defined in Evidence Code Section 225, of witnesses then proposed to be called as witnesses during the hearing by the party and of other persons having personal knowledge of the act, omission, event, decision, condition, or policy which are the basis for the appeal;

(2) All writings, as that term is defined in Evidence Code Section 250, that the party then proposes to enter into evidence;

(3) Any other writing or thing that is relevant to the appeal or complaint; and

(4) Investigative reports made by or on behalf of any party to the appeal or complaint pertaining to the subject matter of the proceeding, to the extent that these reports: (A) contain the names and home or business addresses of witnesses or other persons having personal knowledge of the facts, omissions or events which are the basis for the proceeding, unless disclosure of the address is prohibited by law, or (B) reflect matters perceived by the investigator in the course of his or her investigation, or (C) contain or include by attachment any statement or writing described in (A) to (C), inclusive, or summary thereof.

~~(e) For the purpose of this section, in those instances where an audio tape recording is provided, and all or portions of the tape are inaudible due to poor tape quality, the producing party shall, upon the request of the party requesting the discovery, provide a second, more audible, version of the tape recording, if possible. In those instances where a better quality tape recording does not exist, the producing party shall provide a copy of a written transcript of the tape recording, if such transcript exists. The producing party shall not be required to produce a copy of a written transcript for any requested tape recording, if such transcript does not already exist.~~

(fd) All parties receiving a request for discovery shall produce the information requested, or shall serve a written response on the requesting party clearly specifying which of those requested matters will not be produced and the basis for the non-production, within ~~12~~ 15 days of receipt of the discovery request, ~~or shall serve a written response on the requesting party clearly specifying which of those requested matters will not be produced and the basis for the non-production.~~

~~(g) Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.~~

~~(h) For purposes of this section, service may be accomplished by mailing the request for discovery to the home or business address of the party from whom discovery is sought. Each request for discovery shall have attached a proof of service.~~



NOTE: Authority cited: Sections 18701 and 18214, Government Code.  
Reference: Section 87164, Education Code; Sections 225 and 250, Evidence Code;  
and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-  
19706, Government Code.

### **§ 57.3. Petition to Compel Discovery.**

~~(a) Any party claiming his or her request for discovery pursuant to Section 57.2 has not been complied with. A party may serve and file with the administrative law judge a petition to compel discovery, naming as responding party the any party who has refused or failed to comply with provide discovery as required by Section 57.2. A copy of the petition shall be served on the responding party on the same date the petition is filed with the administrative law judge. For purposes of this section, service may be effected on the responding party by mailing a copy of the petition to compel discovery, with proof of service attached, to the home or business address of the responding party.~~

(b) The petition shall state facts showing the responding party failed or refused to comply with Section 57.2, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the responding party for an informal resolution of the issue has been made, and the grounds of the responding party's refusal so far as known to the moving party.

~~(c) The petition shall be served upon the administrative law judge and responding party within 5 days after the responding party refused or failed to comply with the request, or within another time provided by stipulation, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the initial hearing date, except upon petition and determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party.~~

~~(d) The responding party shall have a right to file a written answer to the petition. Any answer shall be served on the administrative law judge and the petitioner within 5 days of the service of the petition to compel discovery. For purposes of this section, service may be effected on the petitioner by mailing a copy of the answer, with proof of service attached, to the home or business address of the petitioner.~~

~~(e) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.~~

~~(f) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 5 days of receipt of the responding party's answer to the petition to compel discovery or, if no answer is submitted, within 5 days of the date that such answer was due. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing on the petition shall be conducted prior to the issuance of a decision on the petition. The parties may appear at any such hearing via telephone. The administrative law judge shall decide the petition on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.~~

~~(g) The order granting the petition, in whole or in part, shall be in writing and set forth the matters the moving party is entitled to discover under Section 57.2. The administrative law judge shall serve a copy of the order upon the parties by mail, and/or by facsimile transmission. Where the order grants the motion in whole or in part, the order shall be effective on the date the order is served, and shall specifically state the date on which production is due. Where the order denies relief to the moving party, the order shall be effective on the date it is served.~~

~~(h) The administrative law judge may, upon his or her own motion, or upon the motion of one or more parties to the action and upon a showing of good cause, exercise his or her discretion to continue the initial hearing date in order to resolve any contested discovery issues.~~

(c) (1) The petition shall be served upon the responding party and filed with the administrative law judge within 14 days after the responding party first evidenced his or her failure or refusal to comply with Section 57.2 or within 30 days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party.

(2) The responding parties shall have a right to file a written answer to the petition. Any answer shall be filed with the administrative law judge and served on the petitioner within 15 days of service of the petition.

(3) (A) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 20 days after the filing of the petition. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing shall be conducted prior to the issuance of a decision on the petition. The administrative law judge shall serve a copy of the order upon the parties by mail and/or by facsimile transmission.

(B) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from

disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

~~(id) A ruling of the administrative law judge concerning a motion to compel the production of evidence or to compel the attendance of a witness is subject to review in the same manner and to the same extent as the Board's final decision in the proceeding. Any party aggrieved by the decision of the administrative law judge concerning a motion to compel the production of evidence or to compel the attendance of a witness may, within 30 days of the service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief. The hearing shall be continued pending resolution of any such interlocutory appeal.~~

NOTE: Authority cited: Sections 18701 and 18214, Government Code.

Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

#### **§ 57.4. Petition to Quash or for Protective Order.**

(a) Any party claiming that a request for discovery pursuant to Section 57.2 is improper under that Section or is otherwise privileged or exempt for from discovery, may object to its terms by serving and filing with the administrative law judge and the party requesting the disputed discovery, a petition to quash or for a protective order. The petition shall state: (1) a description of the matters sought to be discovered; (2) the reason(s) why the matter is not discoverable under Section 57.2, or is otherwise privileged or exempt from discovery; and (3) that a reasonable and good faith attempt has been made to contact the requesting party and resolve the matter informally.

~~(b) The petition shall be served upon the administrative law judge and the party requesting discovery within 10 days after the moving party was served with the discovery request, or within another time provided by stipulation, whichever period is longer. No petition may be filed after the applicable time period has expired except upon petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reason(s) for the petition, the diligence or lack of diligence of the petitioning party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party. For purposes of this section, service may be effected on the party requesting discovery by mailing a copy of the petition, with proof of service attached, to the home or business address of the party requesting discovery.~~

~~(c) The party requesting discovery shall have a right to file a written answer to the petition. Any answer shall be served on the administrative law judge and the petitioner within 5 days of the service of the petition to quash and/or for a protective order. For purposes of this section, service may be effected on the petitioner by mailing a copy of the answer, with proof of service attached, to the home or business address of the petitioner.~~

~~(d) Where the matter sought to be protected is in the possession, custody or control of the moving party, and the moving party asserts that the matter is not a discoverable matter under the provisions of Section 57.2, or is otherwise privileged or exempt from discovery, the administrative law judge may order lodged with him or her matters provided in Section 915(b) of the Evidence Code and examine the matters in accordance with those provisions.~~

~~(e) Unless otherwise stipulated by the parties, and as provided in this section, the administrative law judge shall review the petition and any response filed by the responding party and issue a decision granting or denying the petition within 5 days of receipt of the responding party's answer to the petition. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing on the petition shall be conducted prior to the issuance of a decision on the petition. The parties may appear at any such hearing via telephone. The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.~~

~~(f) The order granting the petition, in whole or in part, shall be in writing and set forth the matters the moving party is not required to produce to the party seeking discovery under Section 57.2. The administrative law judge shall serve a copy of the order upon the parties by mail, and/or by facsimile transmission. Where the order grants the motion in whole or in part, the order shall be effective on the date the order is served, and shall specifically state the date on which production, if any, is due. Where the order denies relief to the moving party, the order shall be effective on the date it is served.~~

(b) (1) The petition shall be served upon the party seeking discovery and filed with the administrative law judge within 10 days after the moving party was served with the discovery request, or within another time provided by stipulation, whichever period is longer. No petition may be filed after the applicable time period has expired except upon petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reason(s) for the petition, the diligence or lack of diligence of the petitioning party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party.

(2) The party requesting discovery shall have a right to file a written answer to the petition with the administrative law judge and served on the petitioner within 5 days of the service of the petition to quash and/or for a protective order.

(3) (A) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response and issue a decision granting or denying the petition within 20 days after the filing of the petition.

(B) The administrative law judge shall have the discretion to continue any evidentiary hearing or to conduct the hearing prior to the issuance of a decision on the petition.

(C) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(gc) A ruling of the administrative law judge concerning a petition to quash or for a protective order is subject to review in the same manner and to the same extent as the Board's final decision in the proceeding. Any party aggrieved by the decision of the administrative law judge concerning a motion to quash the production of evidence and/or for a protective order may, within 30 days of the service of the decision, file a petition to quash and/or for protective order in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief.~~The hearing shall be continued pending resolution of any such interlocutory appeal.~~

~~(h) The administrative law judge may, upon his or her own motion, or upon the motion of one or more parties to the action and upon a showing of good cause, exercise his or her discretion to continue the initial hearing date in order to resolve any contested discovery issues.~~

NOTE: Authority cited: Sections 18701 and 18214, Government Code.

Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.